

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-17899-2017 (O&M)
Date of Decision: September 01, 2017

1. Rajender Singh
Versus
State of Haryana and others
Petitioner
Respondents

CWP-13998-2017 (O&M)

2. Balwant Kumar
Versus
State of Haryana and others
Petitioner
Respondents

CWP-12766-2017 (O&M)

3. Kuldeep Singh
Versus
State of Haryana and others
Petitioner
Respondents

CWP-15785-2017 (O&M)

4. Veer Bhan
Versus
State of Haryana and others
Petitioner
Respondents

CWP-16642-2017 (O&M)

5. Jai Pal
Versus
State of Haryana and others
Petitioner
Respondents

CWP-16940-2017 (O&M)

6. Dalip Singh

Petitioner

Versus

State of Haryana and others

Respondents

CWP-16953-2017 (O&M)

7. Ramesh Chander

Petitioner

Versus

State of Haryana and others

Respondents

CWP-18317-2017 (O&M)

8. Sandeep

Petitioner

Versus

State of Haryana and others

Respondents

CWP-17100-2017 (O&M)

9. Ram Kishan

Petitioner

Versus

State of Haryana and others

Respondents

CWP-17194-2017 (O&M)

10. Sanjay Kumar

Petitioner

Versus

State of Haryana and others

Respondents

CWP-18675-2017 (O&M)

11. Devender Petitioner

Versus

State of Haryana and others Respondents

CWP-17207-2017 (O&M)

12. Satish Kumar Petitioner

Versus

State of Haryana and others Respondents

CWP-17465-2017 (O&M)

13. Nasib Singh Petitioner

Versus

State of Haryana and others Respondents

CWP-17640-2017 (O&M)

14. Joginder Singh Petitioner

Versus

State of Haryana and others Respondents

CWP-18382-2017 (O&M)

15. Subhash Petitioner

Versus

State of Haryana and others Respondents

CWP-18388-2017 (O&M)

16. Vijay Kumar

Petitioner

Versus

State of Haryana and others

Respondents

CWP-18393-2017 (O&M)

17. Dalbir Singh

Petitioner

Versus

State of Haryana and others

Respondents

CWP-19189-2017 (O&M)

18. Raj Kumar

Petitioner

Versus

State of Haryana and others

Respondents

CWP-19190-2017 (O&M)

19. Raj Kumar

Petitioner

Versus

State of Haryana and others

Respondents

CWP-19207-2017 (O&M)

20. Parveen Kumar

Petitioner

Versus

State of Haryana and others

Respondents

CWP-19202-2017 (O&M)

21. Sukhbir Singh

Petitioner

Versus

State of Haryana and others

Respondents

CWP-19199-2017 (O&M)

22. Suresh Kumar

Petitioner

Versus

State of Haryana and others

Respondents

CWP-19197-2017 (O&M)

23. Jaipal

Petitioner

Versus

State of Haryana and others

Respondents

CWP-19193-2017 (O&M)

24. Pawan Kumar

Petitioner

Versus

State of Haryana and others

Respondents

CWP-19326-2017 (O&M)

25. Sheelu

Petitioner

Versus

State of Haryana and others

Respondents

CWP-19328-2017 (O&M)

26. Sanjay Kumar

Petitioner

Versus

State of Haryana and others

Respondents

CWP-13937-2017 (O&M)

27. Shyam Sunder

Petitioner

Versus.

State of Haryana and Others

Respondents

CWP-16424-2017 (O&M)

28. Ashok Kumar

Petitioner

Versus

State of Haryana and Others

Respondents

CWP-16495-2017 (O&M)

29. Inderjit & Others

Petitioners

Versus

State of Haryana and Others

Respondents

CWP-13979-2017 (O&M)

30. Jitender Singh

Petitioner

Versus

State of Haryana and Others

Respondents

Petitioners

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CWP No. 14432 of 2017(O&M)

43. Rattan Singh

Petitioner

Vs.

State of Haryana and Others

Respondents

CWP No. 14714 of 2017(O&M)

44. Jagdish Chander

Petitioner

Vs.

State of Haryana and Others

Respondents

CWP No. 14721 of 2017(O&M)

45. Sombir

Petitioner

Vs.

State of Haryana and Others

Respondents

CWP No. 15167 of 2017(O&M)

46. Narender Kumar

Petitioner

Vs.

State of Haryana and Others

Respondents

CWP No. 15177 of 2017(O&M)

47. Satpal

Petitioner

Vs.

State of Haryana and Others

Respondents

CWP No. 15293 of 2017(O&M)

48. Narender Kumar

Petitioner

Vs.

State of Haryana and Others

Respondents

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CWP-18945-2017(O&M)

75. Rajesh Kumar	Petitioner
Vs.	
State of Haryana and Others	Respondents

CWP-19061-2017(O&M)

76. Balwan Singh	Petitioner
Vs.	
State of Haryana and Others	Respondents

CWP-19068-2017(O&M)

77. Pardeep	Petitioner
Vs.	
State of Haryana and Others	Respondents

CWP-19081-2017(O&M)

78. Subash Chander	Petitioner
Vs.	
State of Haryana and Others	Respondents

CWP-19092-2017(O&M)

79. Sunil Kumar	Petitioner
Vs.	
State of Haryana and Others	Respondents

CWP-19288-2017(O&M)

80. Mahender Singh	Petitioner
Vs.	
State of Haryana and Others	Respondents

CWP-19347-2017(O&M)

81. Shyam Lal
Vs.
State of Haryana and Others

Petitioner

Respondents

CWP-19696-2017(O&M)

82. Gulshan
Vs.
State of Haryana and Others

Petitioner

Respondents

CWP-19718-2017(O&M)

83. Parveen Kumar
Vs.
State of Haryana and Others

Petitioner

Respondents

CWP-19719-2017(O&M)

84. Raj Kumar
Vs.
State of Haryana and Others

Petitioner

Respondents

CWP-19727-2017(O&M)

85. Parveen Kumar
Vs.
State of Haryana and Others

Petitioner

Respondents

CWP-19728-2017(O&M)

86. Surender Kumar
Vs.
State of Haryana and Others

Petitioner

Respondents

Petitioner

Respondents

Petitioner

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Respondents

CWP-19828-2017(O&M)

93. Narender Kumar	Petitioner
Vs.	
State of Haryana and Others	Respondents

CWP-19830-2017(O&M)

94. Anil Kumar	Petitioner
Vs.	
State of Haryana and Others	Respondents

CWP-18078-2017(O&M)

95. Satyawar	Petitioner
Vs.	
State of Haryana and Others	Respondents

CWP-18592-2017(O&M)

96. Jai Parkash	Petitioner
Vs.	
State of Haryana and Others	Respondents

CWP-18403-2017(O&M)

97. Rakesh Kumar	Petitioner
Vs.	
State of Haryana and Others	Respondents

CWP-18608-2017(O&M)

98. Ved Parkash	Petitioner
Vs.	
State of Haryana and Others	Respondents

Respondents

Petitioner

Respondents

Petitioner

Respondents

Petitioner

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Respondents

Petitioner

Respondents

CWP-19029-2017(O&M)

105. Narender & Another

Petitioners

Vs.

State of Haryana and Others

Respondents

CWP-19040-2017(O&M)

106 Harpal Singh

Petitioner

Vs.

State of Haryana and Others

Respondents

CWP-19085-2017(O&M)

107 Manohar Lal

Petitioner

Vs.

State of Haryana and Others

Respondents

CWP-19091-2017(O&M)

108 Naresh Kumar

Petitioner

Vs.

State of Haryana and Others

Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Jagjeet Beniwal, Advocate,
Mr. Ramesh Goyat, Advocate,
Mr. Chanderhas Yadav, Advocate,
Ms. Sarla Chahal, Advocate,
Mr. Deepak Raghava, Advocate,
Mr. Shalender Mohan, Advocate,
Mr. Vivek Suri, Advocate,
Mr. Rajat Mor, Advocate,
Mr. H.P.S. Ishar, Advocate,
Mr. Ram Niwas Sharma, Advocate,
Ms. Sharmila Sharma, Advocate,
Mr. Navneet Jindal, Advocate,
Mr. Harish Jain, Advocate,
Mr. R.K. Girdhwal, Advocate,

Mr. Mehardeep Singh, Advocate,
Mr. Nonish Kumar, Advocate,
Mr. Ravinder Hooda, Advocate,
Mr. Harish Nain, Advocate,
for the petitioners.

Mr. Hitesh Pandit, Additional AG, Haryana with
Mr. R.K. Doon, AAG, Haryana.

AMOL RATTAN SINGH, J.

In these 108 petitions, the petitioners, who are either Drivers or Conductors in the respondent-Haryana Roadways, have challenged their transfers/postings vide the different orders impugned in each of these petitions, on the ground that they have been so transferred, against the policy of the State Government (Annexure P3 with CWP no.17899 of 2017), the 1st clause of which stipulates that an employee "may generally not be transferred out of his current place of posting before he has completed two years at that post, except for compelling administrative reasons".

2. There are two sets of petitions, the majority of the petitions being those in which the transfer has been made sometimes within 6 to 7 months of the previous transfer of the employee, or at least within a period of two years of his last posting. They are being referred to in this order as the first set of petitions.

In all these petitions, the transfer orders of the petitioners have been challenged on the ground that they have been transferred out against the aforesaid clause in the transfer policy, which states that a person should not be transferred out from his last place of posting before two years of service is complete, except for compelling administrative reasons.

3. The second set of petitions, which otherwise are very few in number, are of those employees who have been transferred in the month of August 2017 (or late July), pursuant to the orders passed by this Court in the

first set of petitions, staying the transfer of those petitioners. Thus, the second set of petitioners are those who have been transferred back to their previous places of posting, because the transfer orders of some of the petitioners in the first set of petitions, have been cancelled/withdrawn. The second set now challenge their transfer orders on account of cancellation of the orders of such other employees.

4. As already noticed in previous orders passed in a number of petitions of the 1st set, no compelling “administrative reasons” have been brought to the notice of this Court in any of these petitions, by which such a large number of transfers have been made, in some cases within 6 to 8 months of the previous transfer of the employee.

No rationalization process has also been shown to this Court, due to which such a large number of transfers have been affected, (most of them in June, 2017), such as bus fleets depleting or increasing in different depots, due to which drivers and conductors have to be adjusted accordingly.

5. In some cases, it was also pointed out by the learned counsel for the petitioners, that a note has been given against specific employees, that they are not to be transferred (“NTBT”).

Again nothing has been brought to the notice of this Court by the respondents, to justify such a completely arbitrary note, by whomsoever it was written. Obviously therefore, such kind of notings are only to favour specific employees.

6. Pursuant to the previous orders passed, a short reply by way of an affidavit has been filed in CWP no.17899 of 2017, by the Addl. Chief Secretary to the Government of Haryana, Transport Department, stating therein that a comprehensive transfer policy is now again being formulated by

the Department, a draft of which has been annexed as Annexure R-1 with the affidavit, which is taken on record. Copies thereof have been given to some of the learned counsel for the petitioners.

As regards the governments' stand, a perusal of the affidavit filed in Court today, of the Additional Chief Secretary, shows that no reasons at all have been given for the transfer orders impugned in these petitions and instead, it has been stated that a new comprehensive transfer policy is being promulgated, specific to the Transport Department, so as to ensure "equitable demand based distribution of staff to protect the essential facility of transport to the general public and optimise satisfaction amongst employees in a fair and transparent manner, in order to streamline the mechanism".

It has further been stated that drivers, conductors and other staff (seemingly only Clause III staff), shall be eligible for transfers anywhere in the State at any point of time and that transfers would be effected from April, for 1 ½ months every year, i.e. obviously upto the middle of May.

It has also been stated that officials who have completed 3 years of posting at a particular place / depot would be considered for transfer.

Having stated as above, in the next paragraph it has been stated that, however, transfers can be 'affected' by the Government at any time during the year in case of administrative exigency, transfer of spouses of employees of departments / organisations of the Government of Haryana and the Central Government, as also on compassionate grounds.

In other words, the proposal for keeping the employee posted at one place for a period of 3 years, has been virtually negated in the next very clause of paragraph 5 of the affidavit, on the ground of "administrative exigencies".

7. Whereas obviously the Court understands that a genuine administrative exigency can arise for any of the reasons given hereinabove, or even for other reasons; yet, by common experience it has been seen that the term “administrative exigencies”, is very often used by employers (in this case government), to actually carry out wholly arbitrary transfers as is seen in the present petitions also. In the governments' transfer policy enforced w.e.f. 06.10.2004 (Annexure P3 with CWP no.17899 of 2017), instead of 'administrative exigency', the phrase 'administrative reasons' has been used, after which transfers on such a large scale, against the basic guidelines contained in the policy itself, have been effected.

Naturally, if there are genuine administrative exigencies, they need to be specified, if not in the order of transfer, at least on the noting file of the competent authority, to show as to what administrative exigency prompted him /her to make a transfer against the basic norms of the policy.

8. Undoubtedly, framing of a policy is the prerogative of the executive, i.e. the Government in these cases, and normally the Court would not interfere in the framing of a policy, unless it is shown to be wholly arbitrary or against any statutory provisions etc.

However, in the present cases, it is not the policy of the Government that this Court is 'indicting', but the action of the Government in not adhering to its own policy and acting wholly arbitrarily in making transfers on such a large scale, against the basic norms of the policy, with no justification being given of any administrative exigencies existing for such mass scale transfers, as already said earlier.

9. Consequently, having considered the stands of the opposing sides, even while lauding the proposed policy of retaining an employee for 3 years at

a particular place, these petitions are disposed of by quashing all the transfer orders made in respect of petitioners of the first set of petitions, who have not put in more than two years of service at a particular depot.

10. As regards those who have been now transferred out on account of cancellation of the earlier transfer orders, pursuant to either stay orders or directions by this Court, in petitions filed by the first set of petitioners, it is directed that their re-transfer orders/cancellation/withdrawal of their earlier orders of posting, would remain operative presently; that is to say that the orders impugned in the second set of petitions would continue to operate, with the petitioners therein reporting back to the places from which they were first transferred out.

Thereafter, as regards all Drivers and Conductors of the Haryana Roadways in all depots, they shall be posted out in terms of the existing policy, by which they are not to be posted out for two years. As regards those who have completed two years and therefore require to be posted out, first the persons with the longest stay beyond two years shall be posted out from any particular depot to another, after which the person with the next longest stay would be posted out, and so on.

In no case shall the official respondents post out a Driver or Conductor from his place of posting prior to any other Driver/Conductor (as the case may be), having a longer stay, being posted out from that depot, unless the person with a lesser stay is being posted out in terms of the exceptions in the policy.

Of course, if such employee with a longer stay has a right to remain posted despite such longer stay, on account of any illness in his immediate family or such other conditions as are covered by the existent policy of transfer, then obviously, he would be entitled to the benefit of such part of the policy.

11. It is also directed that in future the official respondents shall ensure that the policy formulated is adhered to strictly, and if any transfers are to be made for “any compelling administrative reasons”, such compelling administrative reasons

shall be specifically detailed, if not in the order of transfer then in the noting sheet of the competent authority that is making the transfer, failing which such transfer shall be considered to be in violation of the present directions, amounting to contempt of Court.

12. It is also directed that no arbitrary direction qua any employee shall be adhered to by the Additional Chief Secretary to Govt. Haryana, Transport Department, and the Director State Transport or any other competent authority, as regards an observation that such an employee is “not to be transferred”.

Thus, any such observation made, without giving detailed reasoning as to why the employee is not to be transferred, (such reasoning also being in terms of the exceptions carved out within the policy itself), shall be ignored by the competent authority.

13. Before finally disposing of these petitions, it is also, by way of a suggestion, suggested that the respondents take into consideration, while framing the new transfer policy, the cases of such employees whose children are studying in Classes 11 and 12, such period of students' lives being crucial to their future careers.

With the aforesaid directions, these petitions are disposed of.

September 01, 2017
Sunil/Anuradha/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes